

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Advanced Television Systems)
and Their Impact upon the)
Existing Television Broadcast Service)

MM Docket No. 87-268

To: The Commission

REPLY
TO OPPOSITION OF WCPX LICENSE PARTNERSHIP
TO NATIONAL PUBLIC RADIO'S
PETITION FOR RECONSIDERATION

Introduction

National Public Radio, Inc. ("NPR") hereby replies to the opposition of WCPX License Partnership ("WCPX")¹ to NPR's petition for reconsideration² in the above-captioned proceeding³ with respect to the use of television channel 6 and adjacent channel interference.

NPR is a non-profit, noncommercial membership organization of more than 570 full-service public radio stations. In addition to producing and distributing such noncommercial educational radio programming as *All Things Considered*, *Morning Edition*, *Talk of the Nation*, and *Performance Today*, NPR manages the Public Radio Satellite Interconnection System.

¹ Opposition to Petition for Reconsideration of National Public Radio, MM Docket No. 87-268, filed July 18, 1997 [hereinafter "WCPX Petition"].

² Petition For Reconsideration Of National Public Radio, Inc., MM Docket No. 87-268, filed June 13, 1997, at 6-8 [hereinafter "NPR Petition"]

³ Advanced Television Systems, Sixth Report and Order, MM Docket No. 87-268, rel. Apr. 21, 1997, 62 Fed. Reg. 26,967 (May 14, 1997); Advanced Television Systems, Fifth Report and Order, MM Docket No. 87-268, rel. Apr. 21, 1997, 62 Fed. Reg. 26,967 (May 14, 1997) [hereinafter "ATV Fifth Report and Order"].

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Argument

WCPX opposes NPR's petition for reconsideration for the same reason WCPX has sought partial reconsideration of the Commission's Fifth and Sixth Reports and Orders: its desire to operate a digital broadcast service in Orlando, Florida via television channel 6. In support of its position, WCPX essentially contends that noncommercial educational FM reserved band stations across the country should protect television channel 6 broadcasters from adjacent channel interference despite the fundamentally changed circumstances resulting from the instant proceeding. For the following reasons, the Commission should grant NPR's petition for reconsideration and deny the WCPX's petition with respect to the channel 6 issue.⁴

As an initial matter, WCPX seeks to preserve its ability to return to its existing NTSC channel 6 position at the end of the transition to digital television ("DTV"), stating that it "takes no position on NPR's Petition to the extent it expresses concern about new DTV Channel 6 allotments."⁵ While NPR accepts this statement at face value, it notes that WCPX "requests the Commission to include Channels 2-51 as the core DTV spectrum."⁶ In any event, and as NPR has previously demonstrated, there are a number of technical considerations uniquely associated with digital broadcasting that raise interference concerns.⁷ Unless and until these concerns have

⁴ See also NPR Petition; Opposition Of National Public Radio, Inc. To Petitions For Reconsideration Of The Fifth And Sixth Reports And Orders, MM Docket No. 87-268, filed July 18, 1997 [hereinafter NPR Opposition to Petitions for Reconsideration]; Opposition of National Public Radio, Inc. to Petition for Reconsideration of "Certain Channel 2-6 Licensees", MM Docket No. 87-268, filed June 9, 1997; Reply Comments of National Public Radio, Inc., MM Docket No. 87-268, filed Dec. 23, 1997 [hereinafter "NPR Reply Comments"].

⁵ WCPX Petition at 3.

⁶ Id. at 4 n.5; see also id. at 2 ("WCPX filed a 'Petition for Partial Reconsideration of the Sixth Report and Order,' requesting, in part, that the Commission use the low band VHF channels (2-6) for DTV.")

⁷ See NPR Opposition to Petitions for Reconsideration at 3; NPR Petition at 7-8; NPR Reply Comments at 7-8.

been addressed, there is no rational basis to authorize new DTV channel 6 operations or to permit current television channel 6 licensees to return to their NTSC channel position at the end of the DTV transition.⁸

WCPX nonetheless contends that, as a general matter, DTV operations will result in less adjacent channel interference.⁹ It concedes, however, that the field tests were conducted in a market without a television channel 6 operation and are therefore inconclusive.¹⁰ If history is any guide, it is incumbent on the Commission to take a long-term view of the DTV transition and not rely on conjecture. After all, the adjacent channel interference issue was first recognized by the Commission in 1972, decades after television and noncommercial radio first began sharing adjacent spectrum.¹¹

WCPX also characterizes the Charlotte tests as noting only "isolated" adjacent channel interference.¹² However, this conclusion is based on anecdotal evidence rather than methodical testing, and the fact that any interference occurred supports avoidance of channel 6 for DTV broadcasting. Consumers, having purchased advanced DTV receivers, will understandably have high expectations for a fully reliable and pristine signal, and the presence of even a single multi-dwelling unit at one of these "isolated" locations could create significant problems for the television station licensee, the adjacent channel noncommercial FM licensee, and the Commission. Moreover, the technical statement submitted with the WCPX petition confirms that the adjacent channel interference problems may be severe:

⁸ See NPR Petition at 8

⁹ WCPX Petition at 8.

¹⁰ See id. at 7.

¹¹ See Changes in the Rules Relating to Noncommercial, Educational FM Broadcast Stations, Memorandum Opinion and Order, 58 R.R. 2d 629, 630 (1985) [hereinafter "TV Channel 6 Memorandum Opinion and Order"].

¹² WCPX Petition at 7.

- "The relatively poor performance of the VHF signals relative to UHF is believed to be attributable to, inter alia, interference to channel 6 reception from close-by noncommercial educational FM stations."¹³
- "At a few locations, adjacent channel interference was sufficiently high that channel 6 data could not be adequately measured."¹⁴
- "As described in the 1995 Charlotte tests, new and additional NCE interference was encountered when observing the channel 6 DTV and NTSC test operation."¹⁵

WCPX also attempts to downplay adjacent channel interference between existing television channel 6 and noncommercial educational FM stations as "limited to isolated cases."¹⁶ By selectively quoting from a Commission decision in a prior channel 6 rulemaking proceeding, however, WCPX fails to provide a complete picture. Thus, WCPX offers a quote in support of its contention that the channel 6 interference problems are not universal,¹⁷ but omits the important conclusion to that passage: "However, a sample of the Commission's Field Operations Bureau's files indicated that the problem, while not universal, can be severe in isolated cases and thus result in large numbers of complaints."¹⁸ Likewise, while quoting the Commission's decision to impose less restrictive protection rules than it had originally proposed,¹⁹ WCPX also omits the important conclusion to that passage: "However, we cannot ignore the fact that NCE-

¹³ WCPX Petition, Attachment 1, at 3 (quoting the Charlotte test report).

¹⁴ Id.

¹⁵ Id. at 4 (citation omitted).

¹⁶ WCPX Petition at 5.

¹⁷ Id. at 5; see Changes in the Rules Relating to Noncommercial, Educational FM Broadcast Stations, Third Report and Order, 57 R.R. 2d 107, 111 (1984) [hereinafter "TV Channel 6 Third Report and Order"].

¹⁸ TV Channel 6 Third Report and Order, 57 R.R. 2d at 111.

¹⁹ WCPX Petition at 5.

FM stations have the potential to cause severe interference to TV-6 stations."²⁰

If it is certainty that WCPX desires,²¹ that desire can be accommodated in a way that does not undermine noncommercial educational radio. Specifically, the Commission can avoid any reliance on DTV channel 6 allotments, as it proposed to do in the Second Report and Order in this proceeding.²² While WCPX asserts that the television channel 6 frequency might be put to other uses more harmful to noncommercial radio, that prospect is difficult to reconcile with the Commission's statutory obligation to avoid interference within the broadcast service,²³ its long-standing policy of protecting incumbent services from new interference,²⁴ and the Federal interest in the growth and vitality of noncommercial educational radio.²⁵ Moreover, assuming the channel 6 spectrum is used for narrow-band services, which is likely to be the case, the potential for adjacent channel interference is much less than with adjacent channel wide-band, television signals.

²⁰ TV Channel 6 Third Report and Order, 57 R.R. 2d at 111.

²¹ WCPX Petition at 2.

²² Advanced Television Systems, Second Further Notice of Proposed Rulemaking, 7 FCC Rcd. 5376, at ¶ 45 (1992).

²³ 47 U.S.C. § 303(f).

²⁴ See NPR Petition at 9 & n.3 (citing Midnight Sun Broadcasting Co., 11 FCC 1119 (1947); Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 10 FCC Rcd. 13821, at ¶ 41 (1995) (interference between co-equal services); In re Resolution of Interference between UHF channels 14 and 69 and Adjacent-channel Land Mobile Operations, 2 FCC Rcd. 7328, at ¶ 4 (1987) (cross-service interference)).

²⁵ See 47 U.S.C. § 396(a).

On the other hand, if harmful adjacent channel interference is as insignificant a prospect as WCPX claims, its interest in operating on television channel 6 can be accommodated, but also in a way that does not compromise noncommercial educational radio. Thus, the Commission can simply require WCPX and other DTV channel 6 licensees to avoid interference to and accept interference from incumbent adjacent channel noncommercial FM reserved band licensees, perhaps subject to any voluntary agreement the affected parties in a particular market might negotiate.²⁶

What is not consistent with the public interest is to authorize digital television broadcasting in a manner that requires noncommercial educational radio stations operating on the reserved spectrum to reduce their service to the public in order to avoid adjacent channel interference to channel 6 licensees. Yet, that is precisely the relief that WCPX appears to seek.²⁷ And, while NPR appreciates whatever efforts WCPX may have made to accommodate the service of noncommercial educational FM radio stations in its market,²⁸ technical fixes to address adjacent channel interference problems may be difficult to implement in other markets or in the future.²⁹ More generally, the Commission should eliminate the need for such technical fixes by taking steps to avoid adjacent channel interference, including by refraining from using channel 6

²⁶ See NPR Petition at 6-8 & 9-10; NPR Reply Comments at 6-11.

²⁷ Compare, e.g., WCPX Petition at 5 ("The problem, if and when it exists, is one of interference to the reception of Television Channel 6. It is not a problem of interference caused to NCE-FM stations.") with id. at 6 ("Channel 6 television licensees and NCE-FM licensees, including many NPR affiliates, have for years cooperated to minimize and avoid potential interference"). See also id. at 7 ("[T]he Charlotte market lacks an NTSC Channel 6 allotment and has several NCE-FM stations operating at considerably higher power and antenna heights than would exist in a market with an NTSC Channel 6 allotment.")

²⁸ WCPX Petition at 1-2.

²⁹ For instance, opportunities to collocate transmitting antennas may substantially diminish during the DTV transition as the demand for tower space increases. See NPR Petition at 2-4; Petition for Further Notice of Proposed Rule Making, MM Docket No. 87-268 (filed May 30, 1997).

for digital television broadcasting.

Finally, NPR agrees with WCPX that the issue of adjacent channel interference can be addressed, in whole or in part, by the adoption of DTV receiver technical standards.³⁰ As WCPX properly points out, the Commission declined to adopt improved television receiver standards more than a decade ago because it represented a long-term solution to the interference problem.³¹ Clearly, with an expected DTV transition period of nine years or longer,³² and the need for consumer equipment manufacturers to produce new types of television reception equipment, a long-term solution is precisely what is warranted under the circumstances now.

³⁰ See id. at 6 & n.9.

³¹ See id. at 6 n.9; TV Channel 6 Third Report and Order, 57 R.R. 2d at 109; TV Channel 6 Memorandum Opinion and Order, 57 R.R. 2d at 631.

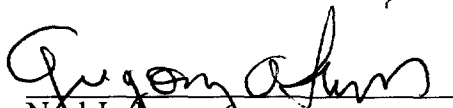
³² See ATV Fifth Report and Order at ¶ 99; H.R. 2015, 105th Cong., 1st Sess. § 3003 (1997); H.R. Conf. Rep. No. 217, 105th Cong., 1st Sess., reprinted in 143 Cong. Rec. H6029, H6032-33 (daily ed. July 29, 1997).

Conclusion

For the foregoing reasons, the Commission should deny the WCPX petition for reconsideration to the extent it seeks relief for itself and other TV channel 6 licensees or allottees. The Commission should grant NPR's petition for reconsideration and avoid the use of TV channel 6, unless it is definitively established that adjacent channel interference will not result or prospective channel 6 licensees agree to avoid interference to and accept interference from incumbent adjacent channel non-commercial FM reserved band licensees.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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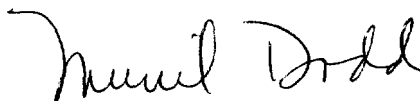
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